

REGIONAL GENERAL PERMIT – BENTHIC BARRIERS (RGP-BB)

Discharge of Fill, Structures and/or Work Associated with Temporary Benthic Barriers In Certain Waters of the State of Idaho

Effective Date:
December 15, 2011

Expiration Date:
December 14, 2016

The Walla Walla District of the US Army Corps of Engineers authorizes work in certain waters in the State of Idaho, as described in this Regional General Permit.

I. AUTHORITY

In accordance with 33 CFR 325.2(e) (2), the U.S. Army Corps of Engineers (Corps) hereby issues this regional general permit (RGP) that authorizes certain activities in Navigable Waters of the United States, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The State of Idaho Departments of Lands and/or Water Resources may also require separate approvals for these activities.

II. AUTHORIZED ACTIVITIES

The following activities would be authorized under the RGP-BB provided they meet the required terms and conditions of the permit:

- The discharge of fill material, structures and or work associated with the placement of temporary benthic (bottom) barriers to control growth of invasive, noxious aquatic vegetation as designated by the Idaho State Department of Agriculture, usually associated with docks and swimming areas for safety and navigation purposes.

III. PROCEDURE OBTAINING APPROVAL

Individuals who want to place benthic barriers as described in this Regional Permit shall **notify** the appropriate agency as noted below:

1. Individuals proposing to place benthic barriers in cooperation with Idaho Department of Lands would not be required to provide separate notification to the Corps of Engineers.
2. Individuals proposing to place benthic barriers who are not in an Idaho Department of Lands sponsored program shall notify the Corps of Engineers by mail or by e-mail of the proposed activity. The notification shall include name, address, GPS location, and square footage. Project must also be compliant with all General and Special Conditions listed below.
3. Individuals proposing to place benthic barriers that do not meet the conditions of RGP-BB must apply to the Corps of Engineers utilizing the Joint Application for Permits process. A copy of this application may be accessed at:

http://www.nww.usace.army.mil/html/offices/op/rf/joint_app.asp.

Completed applications should be mailed to the appropriate Corps of Engineers Office:

U.S. Army Corps of Engineers
Walla Walla District
Coeur d'Alene Regulatory Office
2065 W. Riverstone Drive, Ste 201
Coeur d'Alene, ID 83814

U.S. Army Corps of Engineers
Walla Walla District
Idaho Falls Regulatory Office
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402

U.S. Army Corps of Engineers
Walla Walla District
Boise Regulatory Office
10095 West Emerald Street
Boise, ID 83704

APPLICANTS WHO ARE NOT WORKING IN COOPERATION WITH THE IDAHO DEPARTMENT OF LANDS ARE NOT AUTHORIZED TO PLACE BARRIERS UNTIL THEY RECEIVE VERIFICATION FROM THE U.S. ARMY CORPS OF ENGINEERS THAT THE WORK COMPLIES WITH THE REGIONAL GENERAL PERMIT.

IV. CONDITIONS

A. GENERAL CONDITIONS

1. Maintenance. You shall maintain the activity authorized by this Regional Permit in good condition and in conformance with the terms and conditions. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 3 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you shall obtain a modification of this permit from the Walla Walla District, which may require restoration of the area.
2. Historic properties. Any activity proposed on a known historic or archaeological property, either listed or eligible for listing in the National Register of Historic Places, will not be permitted if found not to be in compliance with the National Historic Preservation Act. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you shall immediately notify the Walla Walla District of what you have found. The Corps will initiate the Federal, Tribal, and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing on the National Register of Historic Places.
3. Transfer of Permit. If you sell the property associated with this permit, the new owner shall request, in writing, that the permit be transferred to them.
4. Water Quality Certification. You shall comply with the conditions specified in the September 9, 2011 water quality certification as special conditions of this permit.
5. Inspections. You shall allow representatives from the Walla Walla District to inspect the authorized activity any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

B. SPECIAL CONDITIONS

1. The placement of no more than 500 square feet of benthic barriers is authorized for each riparian property owner for the control of invasive, noxious aquatic vegetation, unless this criterion is waived in writing by the District Engineer.
2. Invasive noxious aquatic vegetation identification will be verified by local noxious weed superintendent or other qualified individual, prior to barrier installation.

3. Barriers shall be placed below the ordinary high water mark and below the surface of waters to the maximum depth of invasive aquatic noxious vegetation (typically 12-15 feet, but may be deeper in water bodies with greater clarity that allows deeper penetration of sunlight).
4. Barriers will be constructed of PVC frames with gas permeable fabric stretched around the frame. Two sides of the frame are filled with sand to weight the frame to the bottom of the lake; the other two sides will fill with water. Any materials other than this require a waiver in writing by the District Engineer.
5. Divers or permittees will place and move the barriers onto the densest populations of vegetation. The barriers will typically remain in place for 6 to 10 weeks to prevent substantial build up of sediment and must be removed at the end of each season or not later than October 31st of each year.
6. The installations will be checked periodically throughout the treatment window to assure that barriers remain in the designated areas of treatment.
7. No equipment or materials shall be transferred between waterbodies to eliminate spread of invasive noxious vegetation.
8. The applicant must provide a GPS location for the proposed bottom barriers in the notification or application.
9. All construction waste (i.e. PVC pipe and fittings, geotextile fabric, etc.) must be disposed of in an appropriate upland location, such that it will not reenter waters of the United States.
10. Activities not specifically authorized by this Regional General Permit require a separate Department of the Army Permit.
11. Activities may not jeopardize any Federally listed, threatened or endangered species. If the Corps of Engineers determines a specific project may affect a listed species, it will initiate consultation with the responsible federal agency as required under Section 7 of the Endangered Species Act.
12. Use of bottom barriers authorized under Regional General Permit BB may not interfere with navigation.
13. The permittee shall obtain the legal right to use and occupy the affected submerged land.

V. GEOGRAPHIC AREA OF COVERAGE

All waters of the United States in the State of Idaho, with the exception of those areas identified in Section VI.

VI. EXCLUSION AREAS

Certain areas are excluded from coverage under RGP-BB. These areas are listed in *Table 1. Watersheds Excluded From Use of Benthic Barriers* and shown on the attached map entitled *Regional General Permit BB Exclusion Areas dated May 2011*. The reason to exclude certain areas is to protect aquatic flora and fauna which may be listed as threatened or endangered under the Endangered Species Act (ESA). A separate Department of Army Permit is required for work in these areas.

VII. DEFINITIONS

The following definitions are applicable for the purpose of this Regional Permit:

- A. Benthic Barrier – Also known as benthic mats or bottom barriers are mats that are installed on the bottom of a lake to control the growth of invasive aquatic plants. Barriers consist of gas permeable fabric that is usually held at the bottom of the lake with a PVC frame.
- B. Ordinary High Water Mark – The line on the shore established by the fluctuations of the water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- C. Invasive noxious aquatic vegetation – An invasive species of a plant that is injurious to natural habitats and/or ecosystems. Typically they are plants that grow aggressively, multiply quickly without natural controls and adversely affect native habitats.
- D. Weed – A weed is a plant that is growing in a place where it is not wanted.
- E. Gas Permeable Fabric – A fabric that has “breathing” capabilities which allow gases from decomposing biomass to pass through the barrier and escape to the surface.
- F. Geo-textile Fabric – Permeable fabrics which have the ability to separate, filter, reinforce, protect or drain. Typically made from polypropylene or polyester, geotextile fabrics come in three basic forms: woven (looks like mail bag sacking), needle punched (looks like felt), or heat bonded (looks like ironed felt).

List of Invasive Noxious Aquatic Vegetation in Idaho Covered By this Permit:

| Common Name | Scientific Name | Common Name | Scientific Name |
|--------------------------|-----------------------------------|-----------------------|-------------------------------|
| Brazilian Elodea | <i>Egeria densa</i> | Water Chestnut | <i>Trapa natans</i> |
| Common/European Frog-bit | <i>Hydrocharis morsus-ranae</i> | Yellow Floating Heart | <i>Nymphoides peltata</i> |
| Fanwort | <i>Cabomba caroliniana</i> | Eurasian Milfoil | <i>Myriophyllum spicatum</i> |
| Feathered Mosquito Fern | <i>Azolla pinnata</i> | Parrotfeather Milfoil | <i>Myriophyllum aquaticum</i> |
| Giant Salvinia | <i>Salvinia molesta</i> | Curlyleaf Pondweed | <i>Potamogeton crispus</i> |
| Hydrilla | <i>Hydrilla verticillata</i> | Flowering Rush | <i>Butomus umbellatus</i> |
| Policeman’s Helmet | <i>Impatiens glandulifera</i> | Yellow Flag Iris | <i>Iris pseudacorus</i> |
| Variable-Leaf Milfoil | <i>Myriophyllum heterophyllum</i> | | |

VIII. FURTHER INFORMATION

- A. Limits of this Authorization
 1. This permit does not obviate the need to obtain other Federal, State, or local authorizations, as required by law.
 2. This permit does not grant any property rights or exclusive privileges.
 3. This permit does not authorize any injury to the property or rights of others.
 4. This permit does not authorize the interference with any existing or proposed Federal project.
- B. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

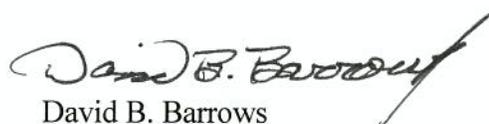
1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property or other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damage claims associated with any future modification, suspension, or revocation of this permit.

C. Re-evaluation of Permit Decisions: The Walla Walla District may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

1. Permittee fails to comply with the terms and conditions of this permit.
2. The information provided by permittee in support of the permit application proves to be false, incomplete, or inaccurate.
3. Significant new information surfaces which the Walla Walla District did not consider in reaching the original public interest decision. Such reevaluation may result in a determination that it is appropriate to use the suspension, modification, or revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring permittee to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. Permittee will be required to pay for any corrective measures ordered by the Walla Walla District, and if the permittee fails to comply with such directive, the Walla Walla District may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

D. Expiration: This regional permit expires 5 years from the date of issuance and will be subject to public review prior to being reissued.

The permittee shall comply with all conditions contained in this regional permit or the permit is not valid and a separate Department of the Army Permit will be required to authorize the work.


David B. Barrows
Chief, Regulatory Division

Enclosures

